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THE LOUISIANA HISTORICAL QUARTERLY

Vol. 33, No. 3

JULY, 1950

GOVERNMENT BY TREATY*

by

WILLIAM H. FITZPATRICK
Editor, The New Orleans States

Mr. Parsons, members of The Louisiana State Historical Society,
honored guests, ladies and gentlemen:

I would like first of all to tell the members of The Louisiana State Historical Society that too few people recognize the great part it, and other organizations like it, play in keeping Americans aware of their heritage, and of the liberties they possess which are endangered.

Knowledge is, of course, power; and knowledge is only past experience. Those in government today who propose a policy of force through a strong centralized government are not students of government, or even historians; if they were they would know that such forms of government have been tried again and again and have been found always wanting. A strong centralized government was discarded as a threat, if not a shackle, to the freedom of the individual when this great nation was founded.

But as Thomas Jefferson wrote in 1787, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants," so must our garden of liberty and freedom be weeded from time to time. Just as the Parson, new to the little farming community over in Calcasieu, found out when he visited Brother Jackson at his home for the first time. The Parson walked down back of the house where Brother Jackson was busy hoeing his

* Address delivered before The Louisiana Historical Society, at the Cabildo, New Orleans, Louisiana. Mr. Fitzpatrick was awarded the 1951 Pulitzer Prize for distinguished editorial writing.

sweet potatoes. The Parson saw before him a beautifully kept garden, with not a weed in sight; everything green and orderly and flourishing.

"My, my, Brother Jackson," he said, "this sho' is a fine garden you and the Lawd has got here."

"Yessuh, Parson," Brother Jackson said, "it shorely is. But you shoulda seen it when de Lawd was wukkin' it by hisself."

So it is with our form of government. We've got to keep the weeds out, and we've got to keep hoeing it down.

It is perhaps a generalization to say that Americans believe their liberties can be lost in two ways; by conquest from without and by conquest from within. I consider the latter more dangerous—because it is more subtle. By conquest from within I do not mean a seizure of the government by violence, with attendant bloodshed and pillage. I mean conquest of our ideas of government, of our concept of the relationship of a government of free men to its people, by acceptance of little-understood so-called programs for peace.

We are told daily on the one hand that we are fighting in Korea to preserve our liberties and on the other that we must agree to proposals on the world scene which in the end may be as deadly to our liberties as conquest from without. We are told that we must give up this part of our sovereignty, forget about that freedom, in order to live safely in the world. It seems to me that many of us have forgotten the import of Patrick Henry's stirring words before the Virginia House of Burgesses:

What is it that gentlemen wish? What would they have? Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me. . . .

Every school child in America knows the end of that famous quotation. But it took Attorney General Ike Murray of Arkansas to bring it up to date recently. He said that today such a statement would be considered a shoddy and inadequate platform, and completely unacceptable. Patrick Henry today would have to end that quotation, Mr. Murray said, like this:

Give me liberty, a minimum intake of 3000 calories daily, eight paid holidays a year, free medicine, a paper doily under every plate and two swizzle sticks in my old-fashioned, or give me death, provided social security pays my funeral expenses.

I do not mean to make a Fourth of July speech here. But there was a Fourth of July, and such speeches as Henry's were the marrow of the bone of our country's strength. I prefer them to the manifestoes of faint hearts who would lay all we hold dear a sacrifice to compromise on a godless altar they have raised and named Necessity.

Its true name is world government. We are told that it will be democratic, a representative form of government. That means a common citizenship; a common coin; a common law. It means we will be outvoted in any world Congress by the dictators because they control more people than there are of us and they will have more representatives. It means we will have no more immigration laws to keep undesirables out of this country; it means we will be impotent to prevent the laying of taxes on this country to dry up the fruits of our own industry; it will mean the destruction of rights such as trial by jury and free speech.

Government by Treaty is just one step short of world government. There are a number of dangerous treaties which have been proposed by the United Nations. I shall discuss only two of these: The Genocide Convention and the Covenant on Human Rights. First, I shall show how these treaties can become the law of the land—though they never pass the Congress as such.

The United States Constitution provides that the President, by and with the consent of the United States Senate, has the power to enter into treaties with foreign nations. If two-thirds of the Senate—present when the treaty comes to a vote, mind you, not necessarily two-thirds of the entire membership—votes to ratify a treaty, that treaty becomes the supreme law of the land.

At the same time, all treaties supersede state laws, and all state constitutions, and all city and county and municipal law.

This is so, because the United States Constitution provides, in Article II, Section 2, Paragraph 2, that:

He (the President) shall have power by and with the consent of the Senate to make treaties, provided two-thirds of the Senators present concur. . . .

And because Article VI, Section 2, provides that:

"This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which

shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

In other words, the President and the Senate alone can act to override any state laws through the device of treaty enactment.

The Genocide Convention is the outgrowth of international revulsion at the mass executions perpetrated on helpless people by Hitler and his underlings.

On June 7 of this year, the papers all had page one stories telling of the executions of seven notorious Nazi war criminals for the murder of two million peoples in concentration camps.

These Nazi war criminals were convicted at the Nuremburg trials, which resulted from the establishment of an international military tribunal. They were the last of 275 executed by order of the war crimes tribunals.

These murderers paid the penalty of their monstrous crimes. They committed these crimes because it was the Hitler program of extermination of minorities. That is what most of us think of when we hear of Genocide.

But would they have come under the Genocide Convention if it had been in effect when their crimes were committed?

George Finch, editor of the American Journal of International Law, and a student of the Convention since its inception, testified before a Senate subcommittee January a year ago:

"As Genocide is defined in the Convention, it does not apply to the mass killings and destruction of peoples by totalitarian governments, but appeases such governments by making it possible for them to continue, as they are doing today behind the Iron Curtain, the monstrous treatment of thousands of human beings whom those governments regard as enemies of the Communist states. There is not a word in the Convention which denounces as Genocide the mass killings and destruction of peoples by governments."

It goes without saying that no decent person can quarrel with the announced objectives of this Convention—the outlawing of mass murder of a racial, religious or ethnical group. The very word Buchenwald will live forever as a measure of the depths of

mankind's degradation. But the Genocide Convention goes far beyond these announced objectives. The Genocide Convention makes mandatory the shipment overseas of Americans accused of Genocide committed abroad, and proponents of the Convention plan a criminal chamber to try all Americans accused of Genocide wherever the International Court of Justice might be sitting even when that alleged offense was committed in his own home. What happens here to the American right to trial by jury in the state and district in which the crime allegedly occurred, as is guaranteed all of us by Article VI of the Bill of Rights?

The Genocide Convention includes among its violations the causing of mental harm. What court will spell out for us just what this means? The lawyers of this country do not know. The final arbiter of this question will be the International Court of Justice, for that court has the right to determine any question of interpretation of the Convention. Thus, the International Court of Justice is in a position to determine American law, a prerogative up till now reserved solely to the United States Congress and United States Courts.

The Covenant on Human Rights likewise threatens our Bill of Rights. It specifically endangers four of our most precious heritages. These are:

- Freedom of Worship
- Freedom of Speech
- Freedom of the Press, and
- Freedom of peaceful assembly.

The Covenant threatens them by limiting and restricting them. Let me read to you the First Amendment to the United States Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. . . ."

There are no exceptions to these rights in our Constitution. But the Covenant on Human Rights contains so many restrictions, so many exceptions and so many limitations that they are no

longer rights free men hold, but grants by government which, in many cases, under the Covenant, can be taken away whenever a government decides to call a national emergency.

Let me repeat part of Article I of the Bill of Rights:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; . . ."

Those words are the cornerstone of freedom of worship in the United States; under their protection Protestant, Catholic, Jew, Christian Scientist, Hindu, and Moslem have been secure in their right and desire to worship their God as they chose. Agnostic and atheist have been equally secure in their right to question or to disbelieve.

Those words are unequivocal, given to no other judicial interpretation through the years than these:

The Congress can establish no state religion; and

The Congress is prohibited from interfering with religious worship or beliefs.

* * * *

After the United States Constitution had been ratified by the States, fear of a strong centralized government arose. The Bill of Rights was written to allay these fears. But the prohibition against government interference in religious worship did not lead the list of freedoms in the Bill of Rights by accident.

Freedom of worship was deep-rooted in the history and mores of the people, for those who believed in freedom of worship had helped found the country. It was a desire for religious freedom that brought the Pilgrims to Plymouth Rock, William Penn's Quakers to Pennsylvania, and Lord Baltimore's Catholics to Maryland, more than a century before George Mason wrote the Bill of Rights.

* * * *

This freedom of worship which Americans have recognized as the right of each individual is endangered by the draft Covenant of Human Rights.

Paragraph 2 of Article 13 of the Covenant on Human Rights reads:

"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and

are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

What effect will this have if this Covenant is ratified by the Senate as a treaty? A treaty accepted by two-thirds of the Senators present becomes the law of the land. If the Supreme Court validates this treaty, it can nullify the religious freedom in the Bill of Rights by granting the government the power to limit and restrict the free exercise of religion.

The Committee for Peace and Law through the United Nations of the American Bar Association has said the effects also would be these:

"We are confronted with a concept of the freedom of religion embracing the free use of limitations reasonable and necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others. The purported agreement of church and state in Hungary is an example of religion under state regulation and control for public safety and order.

"The people of the United States are asked to approve those restrictions for others on the assurance that perhaps they will not apply in the United States. The persecuted brethren of any religious group in any country dominated by the Soviet shall be assured that such persecutions are legal and proper under a Covenant on Human Rights because the public safety and order of their state demand such protective action. Is this the message we shall send to persecuted worshippers in other lands?

"Today, when an atheistic ideology of great power and proportions confronts the religious groups of the world, an organ of the United Nations presents the doctrine of state regulation of religion, a codification of the right of regulation, and complete destruction of the freedom of religion if laws based on alleged public safety and order of the state shall so provide."

For this danger to religion, among other reasons, the American Bar Association has twice condemned the Covenant.

Article 14 of the Covenant on Human Rights sets forth rights and privileges of speech and the press, and then limits them to a degree heretofore unheard of in free countries.

Similar restrictions are placed upon the right of peaceful assembly in Article 15.

Article 14 reads:

"1. Everyone shall have the right to hold opinions without interference.

"2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of this choice.

"3. The right to seek, receive and impart information and ideas carries with it special duties and responsibilities and may therefore be subject to certain penalties, liabilities, and restrictions, but these shall be such only as are provided by law and are necessary for the protection of national security, public order, safety, health or morals, or of the rights, freedoms or reputations of others."

Article 15 reads:

"The right to peaceful assembly shall be recognized. No restrictions shall be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary to ensure national security, public order, the protection of health or morals or the protection of the rights and freedoms of others."

And as if these limitations and restrictions on these vital rights were not enough, Article 2 of the Covenant gives signatory nations the privilege of canceling Articles 14 and 15 among others "in the case of a state of emergency officially proclaimed by the authorities. . . ."

Are opponents of these treaties alarmists, as is claimed by those pressing the Senate to ratify them, or are they presenting valid arguments?

Those opposed to the Covenant include the American Bar Association, the American Newspaper Publishers' Association, and jurists, both federal and state; a growing number of newspapers, university presidents and law school deans and members of the United States Senate.

These organizations and people believe the Covenant unacceptable to the American form of government as we know it.

But is there any judicial basis for their fears?

What has been the attitude of the United States Supreme Court in the matter of treaties?

Let's look at the record.

* * * *

The Supreme Court has never expressly declared any treaty ratified by the Senate invalid.

The Supreme Court has upheld a law enacted to place teeth in a treaty after the same law had been declared unconstitutional before the treaty was ratified.

This instance of the Supreme Court ruling that the treaty-making power could be used successfully where the Constitution forbade the Congress to act is pointed to by Frank E. Holman of Seattle, a former president of the American Bar Association, as a "blank check for writing a new Constitution."

Here's how it came about: In 1913, Congress enacted a Federal migratory bird act. After its approval by the President, its constitutionality was questioned on the grounds that it invaded the reserved powers of the states, and the statute was declared unconstitutional in 1914 by the United States Court in the Eastern District of Arkansas in *United States vs. Shauver*, and again in 1915 in *United States vs. McCulloch* in a Federal Court in Kansas.

Supporters of the regulations governing the taking of migratory birds then sought the treaty route. The President concluded a treaty with Great Britain and the Senate ratified it.

A second migratory bird act was then enacted. It was practically identical with the first, and it was attacked as unconstitutional also.

This time the Supreme Court, in *Missouri vs. Holland*, upheld the law as valid since it was implementation of a valid treaty.

"This decision," Mr. Holman writes, "In effect, and really for the first time, opened the way for amending the Constitution of the United States by and through a treaty, because it proclaims that an otherwise unconstitutional law may become constitutional when, as and if the President negotiates a treaty on the subject and obtains approval of the Senate."

This is nothing more nor less than Government by Treaty.

The case of William N. Oatis, correspondent in Czechoslovakia for the Associated Press who was sentenced to 10 years at hard labor as a spy by that Red regime, has aroused considerable discussion in America during the past three months.

Oatis, according to AP records, has been employed by that wire service since 1937; he is an American who worked in Indianapolis, New York and London before being sent to Prague. His record was excellent. He was objective and unbiased.

A communication issued by the Board of Directors of the AP which pledged its continuing efforts to effect, if possible, the release of Mr. Oatis, reads, in part:

"Developments at his trial indicated the pattern in which a man can be convicted of so-called espionage when he has done no more than report established facts and daily developments in the country to which he is accredited. The statute under which he was tried appears to be so all-embracing that a prosecutor and court could, if desired, find his activities in conflict with the law if a correspondent recorded anything about public events in words other than those authorized by the Czechoslovak government."

Said another way, that means that a man may be found guilty of espionage if he attempts to rewrite a propaganda hand-cut and tell the truth.

The case of Cardinal Mindszenty is well known. He was accused of espionage and conspiring to return the monarchy to Hungary. Just this year the Primate, Archbishop Groesz, was sentenced to 15 years in a mock trial in Budapest for virtually the same thing. The Hungarian government demanded the withdrawal of two members of the American Legation on charges that they had conspired with the Archbishop, an allegation so false that the United States has refused that request.

These mock trials, arising from unjust laws, have stirred the country into a realization that our ideas of justice and our beliefs in the rights of individuals do not quite fit into the pattern of European Communism.

* * * *

Yet this is the philosophy we are being asked to accept for Americans abroad and at home in the Covenant on Human Rights. The Covenant makes such persecutions legal and proper.

Hungary and Czechoslovakia have followed the Covenant in the cases of the Cardinal and the Archbishop and Mr. Oatis to the letter.

This is the sort of "freedom" our Senate may be asked to enact as law of the United States by ratification of a treaty, if the Covenant comes to our Senate unchanged.

We will not only be saying that what these European Communist states have done in the cases of the church and the press is eminently right, but we will be agreeing that it ought to be done here, too.

An American Bar Association committee named to study this proposed treaty says that under it:

"The government could, for example, close down newspapers just as in other emergencies the President has closed down banks."

The government could also close down universities and radio stations, seize and burn books and pamphlets and disperse any assembly of citizens gathered together to question such steps.

* * * *

So far I have discussed only the so-called civil and political rights the Covenant grants, and the manner in which they conflict with our Bill of Rights.

The Covenant, however, is also a blueprint for socialism. Article 19 reads:

"The States Parties to the present Covenant . . . undertake to take steps, individually and through international cooperation, to the maximum of their available resources with a view to achieving progressively the full realization of the rights recognized in this part of the present Covenant."

What the federal government is asked to provide "individually and through international cooperation" to the maximum of our available resources is made clear in the Covenant.

Article 22 says: "The States Parties to the Covenant recognize the right of everyone to social security."

Article 23 says: "That States Parties to the Covenant recognize the right of everyone to adequate housing."

Article 24 says: "The States Parties to the Covenant recognize the right of everyone to an adequate standard of living and the continuous improvement of living conditions."

All of these are "rights" provided by the "state" (Article 32) which the state can limit or reject at any time "for the purpose of promoting the general welfare in a democratic society." Thus the state is empowered to control the scale of living.

The Covenant also obligates us to place both education and the medical profession under government control.

The Covenant strikes at both secondary and higher education in Article 28. This article reads:

"The States Parties to the Covenant recognize:

1. The right of everyone to education;
4. That secondary education, in its different forms, including technical and professional secondary education, shall be generally available and shall be made progressively free;
5. That higher education shall be equally accessible to all on the basis of merit and that all be made progressively free;

Article 32 of the Covenant designates these as "rights provided the States. . ."

Since the Covenant will be the law of the land if ratified as a treaty, the federal government will be legally obligated to provide progressively free secondary and higher education throughout the country. This increasing control of education will effect all endowed institutions, all religious colleges and universities, and all state institutions. Federal aid to education will eventually become federal control of education. Education will become propaganda, for control of the budget means control of the textbooks.

Socialized medicine is also planned in the Covenant.

Article 24 reads, in part:

"The States Parties to the Covenant recognize the right of everyone to the enjoyment of the highest standard of health obtainable. With a view to implementing and safeguarding this right each State Party hereto undertakes to provide legislative measures to promote and protect health and, in particular:

(IV) to provide conditions which would assure the right of all to medical service and medical attention in the event of sickness."

This also is one of the "rights provided by the State" in the Covenant. If ratified by the Senate, this right will become an obligation of the federal government. Such an obligation can be carried out only by socialization of the entire medical profession, from test tube to stethoscope, from prescription blank to surgeon's knife.

You will not fail to have noted that so far in this address I have quoted only as authorities those opposed to ratification of the Genocide Convention and the Covenant. There is of course the other side of the question.

Most of the testimony by advocates of ratification which I have studied, either in their writings or in testimony before the Senate sub-committee hearings on the Genocide Convention, displayed an appalling lack of knowledge of the impact of the Convention on the Constitution, or they fell back on the old phrase, "It can't happen here."

But it can happen here. It has already happened here. You may have heard of the Fujii case, in which the validity of the Alien Land Law of California was attacked. We are not concerned here with the morality of the law, which forbade aliens to acquire land in California if they were ineligible to citizenship, though it might be a wise law in Tennessee in the vicinity of Oak Ridge. We are concerned with the fact that it was a state law, struck down by a California court of appeal. The court held that the law was valid under the California Constitution, and the United States Constitution, but that it was invalid under Articles 55 and 56 of the United Nations' Charter forbidding discrimination because the Charter, being a treaty which the United States had ratified, is the supreme law of the land. And this was held despite Article 2 which clearly states that nothing in the Charter is to be interpreted as interfering with the domestic jurisdiction of signatory nations. This decision, of course, is now before the California supreme court and doubtless will go to the high court before final decision. But if it stands as the court of appeals has held, it effectively nullifies all so-called domestic saving clauses or federal state clauses in future treaties.

The most voluble of the special pleaders for enactment of such treaties is Professor Zechariah Chafee, who teaches interna-

tional law at Harvard. Professor Chafee has committed to print, just this year, in the *Wisconsin Law Review*, a long dissertation on "Federal and State Powers Under the UN Covenant on Human Rights." It takes a deal of patience and ingenuity to attempt this essay. But I have done so in a spirit of duty. I must confess that I approached his reasonings with pre-conceived ideas. My study was not an open-minded one. That attitude served to place me, in that respect, on equal ground with the professor. For his articles are extensive apologia for the Covenant, which he himself helped to write.

I need quote only a few passages from this witness for the defense. I shall present his own testimony as the strongest case against ratification.

Professor Chafee's basic assumption, which critics of the Covenant do not admit, is that it will not be self-executing. He then proceeds to doubt his own assumption, when he says:

"A little difficulty is presented by the requirement of Article VI that 'the Laws of the United States' must be 'made in Pursuance' of the Constitution to become 'the Supreme Law of the Land' whereas this phrase is not repeated as to 'Treaties.' The only express qualifications as to them is 'all Treaties made, or which shall be made, under the Authority of the United States. . . .' This difference in phraseology does permit an argument that treaties do not have to comply with the Constitution."

"Little difficulty," indeed!

But he overcomes this difficulty further on, saying: "If any of its provisions do 'really impair the principles of the First Amendment,' no harm will be done," because if the treaty is self-executing, which he is not sure of, nobody will dare do anything about it.

"If the narrow interpretation of the First Amendment be sound, the President and two-thirds of the Senators present can adopt a treaty which calls for—as an example—censorship of the press. They can, but they won't. If they would, they wouldn't be where they are. That sort of thing just doesn't happen in this kind of country."

I pause here momentarily for station identification, to remind you that this is a professor of international law discussing the effect of the treaty power. He would rely on the self-restraint of politicians rather than the restraint of the Constitution.

In another blithe passage, Professor Chafee says: "I fully recognize that we ought not to sacrifice our federal system all of a sudden because of the Covenant." He would rather go it little by little. He thinks it unwise, for instance, to include all the rights such as social security, unemployment relief, adequate rest and leisure, health, food, clothing, housing, medical care because "the resulting complexity may merely scare away potential signers or make the operation of the Covenant break down." "... it is wise," he writes, "not to attempt a great deal at the start. If moderate measures work well, more can be added later."

In parts, Professor Chafee's articles remind one of an angered father's retort to the doctors who tell him that his favorite child is not quite right in the head. He calls all opposed the Hostile Critics, and goes so far at one point as to say: "The strongest proof of the absurdity of these insinuations is to look at the people who drafted Article 14. I have worked side by side with every American who has had anything to do with Article 14 and a good many of the foreigners. The person in charge is Mrs. Eleanor Roosevelt.

"One prominent lawyer considers the Covenant dangerous because she is not a lawyer, and all the other members of the Human Rights Commission are, surprisingly, foreigners" . . . "What Mrs. Roosevelt contributes to the Human Rights Commission are qualities very few lawyers possess. She has vision and imagination." This last blanket indictment of the legal profession is difficult for a layman to understand, especially as Professor Chafee's entire Philippic against the Hostile Critics accuses them of envisioning dangers that aren't there, and of imagination verging on the hysterical.

Consider now the position of Mr. William Fleming, whose article, "Danger to America: The Draft Covenant on Human Rights" some of you may have read in the October and November issues of the Bar Association's Journal. Mr. Fleming is chairman of the department of political science at Ripon College, in Wisconsin.

He writes: "Part III (of the Covenant) is nothing else but the perfect embodiment of the unadulterated welfare state and unmitigated socialism."

He says: "For Americans 'an independent and impartial tribunal' as prescribed by the Covenant is still a far cry from trial by jury. Americans will also look in vain for a prohibition stipulating that no one shall be subject for the same offense to be put twice in jeopardy of life or limb. They will look in vain for a prohibition against the requirement of excessive bail. They will look in vain for a prohibition against compelling a man to be a witness against himself. They will look in vain for rules of evidence designed to curb the otherwise arbitrary power of a court to admit evidence at its discretion."

And he says: "... The nations of the world, far from accepting American ideas on liberty, have succeeded in inducing the American delegation to accept their views. In other words, the efforts of the United States to bestow the blessings of liberty on the world as a whole have boomeranged. The crusading missionary home from abroad finds himself converted to the creed of the non-believers whom he was supposed to teach the Gospel! What a spectacle, ludicrous and tragic at once!"

And he says: "In the last analysis, ratification of the Covenant would amount to introducing world government through a back door."

And he says: "It is a well known general rule that the Constitution means what the court says it means. It stands to reason that the question whether or not provisions of the Covenant limit the Constitution, will also be ultimately decided by the Court. The Court may consider the treaty as being 'of equal dignity with our Bill of Rights,' as the Committee on Peace and Law reported in September, 1949. Thus, the American system is clearly put in jeopardy. If one is disturbed over taking such a risk with the Court, as one certainly should be, non-ratification of the Draft Covenant is the only sound solution."

There is, however, a final solution. That is to cure the treaty clause by amending the Constitution to prevent any treaty from invading the domestic law; unless already authorized by the Constitution; to prevent any treaty from changing our form of

government. It is a solution the American Bar Association is now considering. Let us hope they agree upon the form and terminology during President Barkdull's term.

Thomas Jefferson wrote in the Declaration of Independence:

"Prudence, indeed, will dictate that governments long established should not be changed for light or transient causes. . . ."

Yet we are asked to limit, except and restrict historic rights simply to meet upon a common ground of agreement with other nations whose peoples do not understand, nor value, nor in some cases desire, the freedoms of which we are the inheritors.

I do not think that all of us realize the full measure of our Constitution. It was written by men wise in the ways of government. Men who had taken from this country's law the best it offered, and from that its very best, so that when it was fashioned they had created, in the words of William Gladstone:

"The most wonderful work ever struck off at a given time by the brain and purpose of man."

Is that a thing to be discarded lightly? I think not. Yet there is some sentiment dedicated to the theory that the United States Constitution is an outmoded document, more appropriate to the Smithsonian Institution than to the Halls of Congress. We would be better off, this sentiment holds, were we to be ruled by an oligarchy of intellectuals in a hurry to do for us the things they think need the doing of. This can lead only to dictatorship, complete and irrevocable, no matter how benevolent its beginnings.

Let us turn to the Federalist papers for proof that the treaty power was never meant as a vehicle for domestic legislation or for an assault, however unintentional, upon the Bill of Rights. Madison, Hamilton and Jay were brilliant students of government. Hamilton was most specific on the treaty power. He said:

"The power of making treaties relates neither to the execution of subsisting laws, *nor to the enactment of new ones.* . . ."

It was inconceivable to these men that the treaty power would ever be used to attack our freedoms and liberties. Had it occurred to them, you may be sure a prohibition would have been placed in the Bill of Rights before it was anchored in the Constitution 160 years ago.

Our republic, flourishing under our Constitution, is the greatest form of government mankind has yet devised to promote individual liberty under law. We can say, with Lincoln,

"Most governments have been based, practically, on the denial of the equal rights of man; ours began by affirming those rights.

"We made the experiment; and the fruit is before us. Look at it—think of it."

We can add, I think—cherish it and guard it well; watch over it and hold it dear. If we lose it, we, and our children's children, may never see its like again.

OLD DAYS ON THE NEW ORLEANS PICAYUNE

by

JOHN SMITH KENDALL

In the later years of the nineteenth century and in the first years of the twentieth, the leading New Orleans newspapers were the Times-Democrat and the Picayune. The latter was the oldest daily in the city, with the exception of the French *Abeille*, which antedated it by a decade, more or less.

The Picayune occupied a place peculiarly its own in the esteem of the community. It was *the* New Orleans home newspaper. It boasted with reason that it could be read by everyone "without bringing a blush to the cheek of modesty." People might buy the other New Orleans newspapers on the streets or take them at their offices, but it was the Picayune that they carried home; and there were scores of families who subscribed to the Picayune because their fathers and grandfathers had done so, and the paper was as much a part of their inheritance as the ancestral silverware or their progenitors' portraits.

Thus the Picayune was entrenched in a very desirable position. The other New Orleans periodicals poked fun at it, called it slow and old-fashioned, published cartoons in which the Picayune was personified as an old lady in spectacles and pantalettes; but these jibes, while amusing, only partially concealed the envy with which its abiding hold on the affections of the public was regarded.

In the process of becoming *the* family newspaper, the Picayune had evolved an extensive series of rules, reservations and prohibitions for the government of its employees. For instance, divorces, triangular love-affairs, and the prospective visits of the stork were matters not discussed in the Picayune's pages. Births might indeed be mentioned, but only in the statistics of the Board of Health. Marriages, generally speaking, were not considered newsworthy. They were relegated to the Sunday "society" column, and printed there only with the consent of, and in a form approved by, the interested parties. Small deviations from the conventional patterns of conduct on the part of prominent and otherwise

well-behaved individuals, were simply ignored. Even crimes were reported with a nice regard for the feelings and reputations of the innocent persons who might—and often were, even in those good old days—be involved.

These were only a few of many interdicted topics. There were others which at the present day would be eagerly seized upon and mercilessly exploited in print. I doubt that the *Picayune* was any less valuable as a news medium because it set up and observed these regulations. Perhaps journalism today might with advantage imitate the *Picayune's* example.

The *Picayune* was long owned by a woman, and it is probable that some of the taboos enumerated in the preceding paragraph derived from her feminine dislike of cruelty, indecency, and lawlessness. But some of them were due to the man who, for an equally long time, was in control of the paper. Thomas G. Rapier was a remarkable person. He was shy, reserved, sensitive, refined, profoundly conscientious, and deeply religious. He viewed with intense disapproval the bad taste, sensationalism and immorality which were already beginning to usurp a large—a too large—place in American journalism. I do not think that Rapier ever made any outright effort to impose his ideas on the *Picayune* staff, but they were known to all his subordinates, and naturally colored and restricted everything that they wrote for publication.

I should not say that Rapier was a great journalist, but he had spent most of his life in newspaper offices, and no one understood better the "business" end of the profession. If he seemed to lack the adventurous instinct which is an essential qualification of the first-rate newspaperman, that may have been less a matter of temperament than a condition imposed by the *Picayune's* financial resources, never too abundant. Under his direction the *Picayune* weathered more than one critical situation; as, for instance, the Anti-Lottery campaign of the early '90s, when the paper found itself on the wrong side, politically, and was proportionately damaged in editorial authority. On the whole, Rapier's influence made for a kind of high-level journalism of which there was not much even in his day, and which has all but disappeared since he passed away about thirty years ago. I suspect that his standards were not without influence upon New Orleans' other newspapers, keeping their enterprise within the boundaries of propriety and good taste which they might otherwise not have hesitated to transgress.

During the last twenty years of Rapier's regime, approximately to the consolidation of the Picayune with the Times-Democrat, in 1914, his control was absolute in all departments of the paper, editorial no less than administrative. With characteristic modesty, however, he labelled himself at first "business manager," and then, as his authority grew, "manager." He became something of a power in local politics, where he used his personal prestige and that of the paper to further the cause of good government wherever that was possible. He was active in all the philanthropic organizations of the Catholic church, but there, as everywhere else, he endeavored by every means in his power to avoid the lime-light—in which he was surprisingly successful. At the Picayune his relations with the staff were uniformly kind, considerate and austere just.

Rapier's dominant position at the Picayune led to some anomalies within the organization which are worth mentioning. In 1895, for instance, "Major" Thomas E. Davis, a handsome, courtly, finely educated veteran of the Confederacy, was nominally editor-in-chief; actually, he was the chief editorial writer. "Major" Nat Burbank, also a veteran of the Civil War, though on the Federal side, was nominally managing editor; actually, he was the dramatic editor and editor of the Sunday literary section, such as it was. Wallace Bostick, who was, nominally, Major Davis' assistant, was really the commercial editor; and he, in his turn, was assisted by Ed Foster, an Englishman, who was nominally the paper's librarian; but as the library consisted of a few score volumes shut up undisturbed in dusty bookcases, Foster had little to do in that direction, and was glad to fill his leisure with other tasks. The city editor in 1891 was "Major" William M. Robinson, another Civil War survivor. He was the busiest man on the paper, and actually copyreader, headline-writer, night editor and, to some extent managing editor, all rolled into one.

There were other "editors." Anybody whose writings went into the paper without revision by a superior was invested with the title. Thus there were the marine editor; the river editor; and a succession of telegraph editors, among whom may be mentioned William C. Dufour, William M. Steele, Finis H. Harris, and W. D. Robinson. But none of these persons had anything to do with making the policies of the Picayune; that was done "down stairs," in the gloomy, old-fashioned "business" office, where Rapier presided in his immaculate shirt-sleeves, at a tall

desk perched on a platform which commanded a view of everything that happened in that part of the Picayune building, and where the greenish light of a perpetually burning Welsback gas-jet diffused its harsh illumination over the "manager's" spare figure and graying head.

The Picayune had a reportorial staff of ten or twelve young men. The number varied from time to time, but seldom exceeded the larger number, and that only temporarily. These young men were surprisingly and uniformly gifted, considering that no special effort was ever made to attract talent to the Picayune staff. Reporters were hired only when the need arose, and then any casual applicant was likely to get the job. The newsroom was a long, narrow, ugly apartment looking into Camp street through three tall, uncurtained and perpetually dirty windows. At first it was furnished with a miscellaneous assortment of battered old desks, no two alike, and a green felt covered table in the middle of the littered floor. No one ever used this table. About the year 1892, when typewriters were installed to comply with the demands of the linotype operators, neat new desks were supplied and the ancient table removed.

Reporters spent as little time as possible in the newsroom. In those days newsgathers were expected to witness as far as permitted the events which they described, or, if not actually present, to interview immediately the participants, and so build up on the spot the narrative later committed to paper. Nowadays, I believe, this so-called "leg work" is no longer done. The telephone, on which the present-day reporter relies, was regarded with some disfavor in those unsophisticated times. In fact, there was but one telephone in the Picayune building, and it served all departments of the paper, the business department no less than the editorial rooms. But the old-style reportorial method had its virtues. It lent vividness and accuracy to the news, though it must be confessed it tended to produce very long, detailed, unnecessarily elaborate accounts of matters which could just as well have been disposed of in a fraction of the space. Anyone who examines the yellowing pages of the newspapers published in the later 1890s will be struck by the prolixity characteristic of much of the reportorial writing of that time.

When I became connected with the Picayune in 1891, there were several men who had been in the employ of the paper for

some years, and remained on the staff for a long time subsequently. Among them were William C. Dufour, Henry W. Robinson, Lamar Quintero, Rushton Foster, John Sliger, Louis E. Cormier, the two Armstrong brothers, and Chris Lindauer. Two of these—Dufour and Robinson—studied law, left the paper to practice their profession, and rose to considerable prominence in the city. Dufour, who is still living, began as a reporter on the Delta, and when that paper ceased publication, transferred his allegiance to the Picayune. Robinson was the son of Major W. M. Robinson. After quitting the Picayune he took some part in local politics, and served a term or two as surveyor of the port.

Quintero came by his reportorial job as a matter of inheritance. He was the son of Don José Quintero, the poet and journalist, who was long conspicuous in journalistic circles in New Orleans. After his graduation at Tulane University in the law, young Quintero specialized in court reporting, became the Picayune's attorney, and maintained a rather sketchy connection with the editorial staff as dramatic critic down to his death, about twenty years ago. He was once offered a place on the Supreme Court of the Philippines, but declined it. He was a member of the United States commission headed by Elihu Root which attended the Pan American Congress in Buenos Aires.

Quintero printed a revised edition of the *Code Duello* originally compiled by his father, but duels went out of fashion in New Orleans before it could be invoked by quarrelsome persons, who wanted to take pot-shots at one another. The publication, however, made him a nationally-recognized authority on "honor." Every now and then a Northern newspaper referred to him for solution some knotty problem of that sort, and Quintero would very solemnly render a decision that would be duly published and applauded.

It must be confessed that Quintero did not take his reportorial responsibilities very much to heart. Once, in the early days of his career, he was sent to report a festival promoted by a local benevolent organization, one of those fraternal societies very numerous in New Orleans in those days, but which have since completely disappeared. The merry-making was to take place at one of the resorts on Lake Pontchartrain, and to attend it, as Quintero ascertained, would require a tedious trip in a "dummy" train and a lengthy stay in a not-very-congenial group. He decided

not to go, but wrote a glowing account of what he imagined took place, including a speech by the president of the organization. The next day he was called on the carpet by Major Robinson, to explain how a dead man was able to deliver that oration. It seems that the president had died suddenly on the previous morning, and the festivities had been cancelled. There was nothing to do but confess, which Quintero did, and, after the tolerant, happy-go-lucky fashion of those pleasant days, was forgiven, on the understanding that he wouldn't do it again.

Rushton Foster was a newspaperman, and nothing else. He came to the *Picayune* in the early 1880s, and remained until failing health necessitated his retirement, more than thirty years later. He specialized in racing news, but also did much "feature" work, some of which was very brilliant. His masterpiece was a description of the journey of the train which bore the body of Jefferson Davis from New Orleans to its final resting place. Foster accompanied the train, and his story of its trip through the sorrowing South, is one of the classics of New Orleans journalism.

Beginning about the year 1890 Foster contributed to the New Year edition of the *Picayune* an annual page-length review of the preceding twelve months. This made no pretention to literary charm; it was a day-by-day factual summary of the more important current news stories. At the turn of the century ten of these reviews were reprinted in book-form. The little volume was Foster's only book publication. Its painstaking, accurate, comprehensive character was characteristic of its author's mental habits. He had a vast store of information about an enormous variety of subjects, particularly New Orleans and Louisiana. If he did not happen to know just what was wanted at the moment, he knew where to go to get it.

Eventually Foster was transferred from the reportorial staff to the business office of the *Picayune*, and closed his long career as chief clerk to Rapier. When he finally retired, he went to live on the Gulf Coast, and died there a few years later, well along in years.

Except for a term as member of the New Orleans city council in the late 1880s, John Sliger spent practically his entire life in the employ of the *Picayune*. For forty years he was the *Picayune's* shipping reporter—nominally "Marine Editor"—but

retired when the paper was consolidated with the Times-Democrat in 1914, and died not long thereafter. In those days the port activities were differentiated for news purposes into the ocean-going traffic and the river steamboat traffic. Sliger limited himself to the former; the latter was the province of Louis E. Cormier. Cormier reported the movements of the river craft for the Picayune from about 1885, and when the Picayune and the Times-Democrat were combined, did the same for the consolidated periodical till his retirement a few years later.

At one time Cormier was interested in photography, and for several years did news photography for the Picayune. He was thus one of the first—if not the first—news photographers to function in New Orleans. Most of this work was done in connection with a weekly illustrated magazine supplement, printed for the Picayune by a Northern newspaper syndicate. It was a desperately dull publication, but it was a novelty in local journalism, and in that way justified its use. Probably Cormier's pictures were responsible for its appeal to the Picayune's readers. He did no work of the kind after he joined the staff of the Times-Picayune. He was retired by that paper some years ago, and is still living in New Orleans, hale, hearty, and well over eighty years of age.

The Armstrong brothers were the sons of Henry Armstrong, a once famous New Orleans journalist, whose activities went back to Civil War times. Guy, who was the elder, was a member of the Picayune's reportorial staff in the early 1880s, but quit to become manager of the Association of Commerce in Alexandria, La., and then to go in some similar capacity to Chicago. He had considerable literary talent, published a number of capital short stories, and became extremely prosperous. His brother, F. Duval Armstrong, was just a boy when he entered the employ of the Picayune. He earned the nickname of "Sleepy," because he could go to sleep practically at will, and frequently did so.

To the end of his long and eventful life Duval Armstrong liked to remember that he had "covered" the first football game and the first golf match ever played in New Orleans, and had seen the building of the city's first golf club. The football game took place in November, 1893, on a rainy afternoon at the old Sportsman's Park, in the presence of a few students from Tulane and one or two others—no more. Duval remembered that the game had to be suspended when the only available football was kicked

out of bounds, fell into the adjacent canal, and had to be fished out by the players. Golf came later, and was welcomed by a larger and more enthusiastic clientele.

At that time the Picayune could not afford to have a sports editor. Major sporting events were handled by Herman Seiferth, with whatever assistance might be available at the moment. Duval Armstrong was frequently called on to give such help. Thus it happened that he was present at the Sullivan-Corbett prize fight. He was assigned to "cover" Sullivan's end of that celebrated battle, and followed the vanquished gladiator to his dressing room after the fight. Sullivan was surrounded by a rough-and-ready group of pugilistic friends, and when Armstrong tried to get in, he was told to go away, and aided physically to do so. But he had anticipated that eventuality. Before going into the Olympic Club where the fight took place that night, he had spotted a big empty dry-goods box in an alley behind the building, close to the window of the dressing room. He kept the fact in mind, for possible use in just such an emergency as had now arisen. He rushed around to the alley, dragged the box to the window of Sullivan's room, and listened to the conversation going on within—a loud and highly profane conversation, as the defeated champion and his friends tried to explain to each other the reasons why the fray had ended as it did. Armstrong printed a summary of what he heard, naturally in an expurgated form, but it was the only statement of Sullivan's views regarding the result of the fight that got into the New Orleans newspapers the following morning, and was, therefore, a "scoop" well worth the various discomforts that it cost.

Armstrong's interest in sports increased rapidly, especially in amateur activities. There came a time when he devoted virtually all his time to them. He became in fact, though not in title, the Picayune's sporting editor—the first person, I believe, to occupy himself exclusively with what most people then regarded as trivial matters. Before that happened, however, he made several trips to Central America for the Picayune, writing up revolutions in Nicaragua and Honduras, and forming a close friendship with Lee Christmas, the American adventurer who figured prominently in the civil wars in the latter republic in the 1890s, and is immortalized in Richard Harding Davis' undeservedly-forgotten novel, "Soldiers of Fortune." One of these

serio-comic affairs that Armstrong reported was the seizure by Nicaragua of the British-protected Mosquito Territory. His account of this episode was reprinted all over the country.

Eventually, Armstrong withdrew from the newspaper business, to associate himself with the Cuyamel Steamship Company, and when that corporation was absorbed by the United Fruit Company, obtained a lucrative position with it. He retired on a pension in 1941, and died seven years later, aged seventy-seven, just after his wife had inherited a handsome fortune. She followed him to the grave in less than two months. In his less prosperous years Armstrong used to say that it would be his luck some day to become wealthy, and immediately to be paralyzed so that he would not be able to spend a cent of the money. This whimsical prediction was not exactly realized, for his later days were passed in relative affluence, but in a sense it did come about—he did not survive to enjoy the riches which came to him and his wife—too late.

Another old-time reporter whose career began in the early 1880s was Chris Lindauer. During practically his entire working life Lindauer handled police and recorders' court news. This was not a very exalted form of journalism, but it had its adventures. Once Lindauer hid in a room where some sort of conference was to be held—whether by criminals or by law officers, deponent sayeth not. All went well until he sneezed. Lindauer was discovered and thrown out bodily. He considered himself lucky to escape with a few bruises and considerable loss of reportorial dignity. That was one of the ways in which old-time police reporters got the news and also one of the perils which they accepted as incidental to the job.

One of Lindauer's treasured possessions was an ancient portable typewriter which operated with indescribable clatter, and on which no one could write but himself. He took this venerable instrument with him wherever he went on professional business. The office tradition was that Lindauer was willing to risk his life, if that were necessary, to save his typewriter; and, in fact, he did just that on one tragic occasion. He was one of the little party of Picayune representatives on the yacht "Argo," when it was rammed and sunk by a fruit ship in the Mississippi river. Two of the reporters went down with the yacht, but Lindauer managed to escape, though by the narrowest of margins.

He went back to the "Argo's" cabin to get his typewriter, and emerged to be taken off by a rescuing life-boat, just a moment before the yacht made its fatal plunge.

Lindauer was a diligent but not inspired writer. His long identification with the New Orleans newspapers equipped him with an inexhaustable store of memories about interesting and important matters, and he drew upon them for an occasional feature article—fewer than one could wish. He remained with the Picayune until 1914. The consolidation of the paper with the Times-Picayune left him suddenly without employment, old, poor, and with no hope for the future. So he went home, turned on the gas at the kitchen stove, and died.

The loss of the "Argo" was probably the most tragic incident in the whole long history of the Picayune. The reporters who were drowned when the yacht sank were Harry Parker Hester and Bourgeois de Blesine. They were on their way down the river to "cover" the visit of a Congressional committee to the Jetties. For some reason reporters were barred from the ship on which the congressmen were traveling, and the Picayune chartered the "Argo" for the trip. Suddenly, in the intense darkness of the night, the "Argo" collided with that incoming fruit ship, and sank in a few minutes. Lindauer was saved, as described above, but Hester and Blesine were trapped in the cabin and were carried down with the boat. The Picayune spent large sums in an attempt to recover the bodies, but without avail. No vestige of them or of the "Argo" was ever found.

The death of the two reporters was much deplored. Both were young, and Parker had only recently been married. He was the son of a famous secretary of the New Orleans Cotton Exchange, but early turned to newspaper work. Before joining the Picayune staff he had been employed in various Northern cities. Blesine was a handsome young Creole who was just beginning a career as a newspaperman, which, with his exceptional command of the French language and unusually wide acquaintance with foreign literatures, seemed to promise exceptional success. He had many relatives in New Orleans, some very prominent socially, by whom his untimely death was deeply regretted.

The practice of sending reporters to witness an anticipated news event, to which allusion has been made elsewhere, and which led to the "Argo" tragedy, was responsible for another

incident that narrowly escaped a serious ending also. This arose in connection with the lynching of three negro murderers in Jefferson Parish, just above the city limits, about the year 1895. The reporter, William P. Ball, a first-class man with wide experience and much talent, came measurably close to being lynched also. On the night of the lynching he managed to accompany the mob to the scene, but there he was recognized, and the leaders, fearing that he might publish their names and thus embroil them with the law, were all for hanging him along with the negroes. In the nick of time one of the mobsters, a boyhood friend, with whom Ball had been associated on an amateur baseball team, vouched for his reliability, but the *Picayune's* representative spent some very uncomfortable moments before he was suffered to depart. Ball arrived at the *Picayune* office white as a sheet, in a state bordering on collapse, but such is the force of habit that, in spite of an understandably bad nervous reaction, he was able to compose a long account of the affair—which was a “scoop” of the first magnitude, as such exclusive publications were then reckoned. Perhaps it is not necessary to add that Ball's story did not include the names of the mob leaders, or of the young man whose timely intervention had saved his life.

Ball was a native of New Orleans. He was educated for the Catholic priesthood, but found a secular occupation more to his taste, and in 1891 went to work on the *Item* as a cub reporter. He was employed on every paper in the city at one time or other, but stayed with the *Picayune* longer than with the others. His forte was local politics. He wrote much and ably on that subject. But the *Picayune* could not afford a political specialist, and in Ball's frequent leisure he was dispatched to handle other matters, all of which he reported skillfully and with considerable literary ability. Thus it happened that in 1894 he described the strange case of Will Purvis, the Mississippi lad who was hanged for murder, but lived to die in his bed, many years later. Purvis was convicted of murder and sentenced to death, but at the execution the rope broke, and a superstitious sheriff refused to go on, asserting that Providence had intervened in the grim proceedings on behalf of an innocent man. Protracted litigation followed, but eventually Purvis was freed, though his connection with the murder is still a matter of debate.

In later life Ball served as registrar of voters in New Orleans, and for four years was secretary to Mayor Behrman. Then he

went back to his newspaper avocations, and when he died, in 1939, at the age of seventy-seven, was writing editorial paragraphs for the States.

The custom of sending staff-men to the spot when news broke, or was expected to break, was not limited to the reporters, but included the newspaper artists also. In the 1890s the Picayune artist was Louis Winterhalder, a near relative of the celebrated painter of that name, whose portraits of the English and French court beauties are still so much admired. Winterhalder was a competent but not inspired person, whose chief recommendation was his unfailing reliability. In later years he was aided by a red-headed ex-French army officer, Charles de la Vasselais, who had received an art education in his native country, but spent most of his life in the United States. De la Vasselais was the son of a Second Empire count, and could probably have used the title, had he wanted to do so. He was as gifted a raconteur as an artist. Both men were regularly sent to make sketches of newsworthy scenes, which were then engraved on the chalk plates, used to make cuts for newspaper publication. The half-tone process had not yet been adapted to the needs of daily journalism, and the art of newspaper photography was in its infancy. Winterhalder left the Picayune when it was consolidated with the Times-Democrat, and spent the few remaining years of his life working as a commercial artist in a New Orleans office. De la Vasselais also gave up journalism at the consolidation, turned to commercial pursuits, and made a success as a traveling salesman in the Creole parishes in Louisiana.

There was a third artist who worked intermittently on all the New Orleans Newspapers, but most of the time on the Picayune. This was Ernst Hoepner. He was a German whose extraordinary artistic gift always earned him employment, which his fondness for spirituous liquors as regularly lost. On one occasion he was sent to one of the city churches to make sketches of scenes connected with the funeral of a well-known and greatly respected priest. The body of the dead man lay in state in its coffin in front of the altar. Hoepner, who had paused on his way to the church to slake his thirst at various "saloons," was very unsteady on his feet, and leaned for support against the bier, which upset, scattering its contents all over the place: whereupon the surviving members of the church staff threw Hoepner out bodily. They complained to the paper, and Hoepner was dis-

charged. But not for long. His remarkable talent made him indispensable. Soon he was back on the staff, drawing pictures with a skill which no one in the South at that time could equal.

According to an apparently reliable tradition, it was Hoepner who gave Sidney Porter the pseudonym, "O. Henry," by which he is known in literature. Porter, under indictment for embezzlement in Texas, fled to Honduras, but became so homesick that he decided to go home and face the charges against him. He arrived in New Orleans, but hesitated to continue the journey, and lingered for some months, making up his mind to continue that journey which was to end in the Texas penitentiary.

In those days there was in New Orleans a barroom known as the Tobacco Plant Saloon. The barkeeper, Henry, was adept in picking up from his customers scraps of information useful to newspapermen. Reporters from all the city papers were in the habit of dropping into the Tobacco Plant Saloon, to see if Henry had anything new. The place thus became a sort of informal newspaper club. Porter, who was already advertising in the field in which he later attained such distinction, discovered the place. He found the society congenial, and the barkeeper entertaining and profitable.

One day Porter found Hoepner slaking his thirst at the Tobacco Plant bar. He joined him. Billy Ball, then just beginning his career as a reporter for the Picayune, also lined up. Then it was Porter's turn to treat. "Oh, Henry!" he said, "set 'em up again, will you?" While they were drinking, he produced the manuscript of a story which he had just written. "I want to send this to a magazine," he went on, "but I don't want to sign my name. Maybe you can make a suggestion."

"Why don't you sign it 'Oh, Henry'?" said Hoepner. "You certainly say that often enough."

But it was not until some time later that Porter wrote "O. Henry" at the foot of a sheet of paper, and so launched into the world a pseudonym that, in its time, was probably the most famous one in American letters. That was when he sat writing in the cold gloom on a Texas prison cell. The reasons for concealing his identity were more cogent then than they had been during his temporary sojourn in New Orleans. He searched his brain for some appropriately non-committal designation. Suddenly the memory of the life and warmth and freedom and

companionship at the Tobacco Plant bar flashed upon him. What was it that Hoepner had said? "Oh, Henry!" Yes, that was it. "O. Henry," he wrote, and literature was enriched by a name which, if not still invested with all the glamor that it once possessed, will long be remembered with respect.

Endless stories might be told about Hoepner and the misadventures into which his taste for fire-water led him. Every now and then his experiences brought him to the Charity Hospital with a broken head. In those days there was a gang of hoodlums known as the "Shot Tower Gang," which dominated the vicinity of Camp and Julia streets, and took its name from a towering brick structure which was long ago demolished. Whenever Hoepner was intoxicated—which was lamentably often—he would pick a fight with these semi-criminal characters, and land in the hospital, battered into insensibility.

They were not his only enemies. One Sunday night he was standing in front of the Picayune office, talking to some friends, when an odd character, "Judge" Bossier, thrust himself into the conversation. Bossier was the "fighting editor" of a disreputable weekly called the Mascot, and had acquired a wooden leg somewhere, probably in one of the broils in which he was constantly involved. Hoepner shoved the interloper aside, and Bossier sat down quite suddenly on the sidewalk, drew a pistol from his pocket, and made motions which caused the Picayune's artist to rush upstairs and hide in the dark and dismal room, overlooking Bank Alley, where the paper's files were kept.

Bossier hobbled after him, but searched the premises in vain, and Hoepner went unscathed, at least for the moment. A few days later, however, while Hoepner was sleeping off the effects of his recent potations in the Picayune's local room, Bossier came in, spied him, walked over, quietly broke his heavy walking-stick over Hoepner's head, and then walked out without a word. Hoepner, as usual, took his damaged cranium to the Hospital, where he was duly patched up.

All of which was doubly regrettable, because Hoepner was a man of fine intelligence, with a remarkable command of languages, a large knowledge of half-a-dozen literatures, an exact and cultured taste in artistic matters, and, when sober, a superb pianist. All these talents were thrown away. He drifted away from New Orleans and died in a hospital in Texas forty years ago.

There were many changes on the Picayune staff during the quarter-century over which my connection with the paper extended. There were a number of transients—men who came and went after only a brief period of activity in New Orleans. One of them was Roland Day, who said he was a veteran of the Civil War, and was in much request as a speaker at Confederate reunions. He had considerable ability as an orator, and his speeches at those gatherings were always enthusiastically received.

Alas, that was Day's undoing. He drank too many toasts to the Lost Cause, and fell a victim to delirium tremens. One night his landlady telephoned the Picayune that Day was out in the street in a state of nudity, throwing bits of brick at her windows; and would we please do something about it? We did. Day was taken to the Charity Hospital in a cab, and on the way insisted on putting his bare legs out of the window and waving them at the passers-by. Still unclad, he was delivered to the hospital and put to bed. A day or two later he was borne to the Potter's Field, whither so many of his fellow-professionals have preceded him.

Another transient member of the Picayune reportorial staff was Charles Kindrick, a Tennessean nearly seven feet high, who left New Orleans to be U. S. consul at Ciudad Juarez. Alex Williams came to the Picayune in the late 1890s, after a career as editor of an American newspaper in Mexico City. He was an industrious, very capable reporter. After a few years in New Orleans he drifted North, found a place on the staff of the Christian Science Monitor, and, at last account, was that paper's representative in New York City. The tenure of A. W. Mecklin, however, was quite prolonged—so much so, that perhaps it is an error to qualify him as a transient. He hailed from Georgia, and was an incurable countryman. He attracted some attention by writing stories from the recorders' courts in Biblical style. He went back to Georgia and finished his life as editor of a country weekly there.

A still more picturesque character was J. Nelson Polhamus, a Cuban who had grown-up in the United States and was employed as a stenographer by a local grocery firm. His newspaper work was by way of a side-issue, but took up a great deal of Polhamus's leisure. He liked to write musical criticism, for which

he was not too well prepared. When the Cuban revolution of 1894 or 1895 broke out, he exerted himself strenuously to raise funds ostensibly for the widows and orphans of the patriot soldiery, but the public believed that most of the money went for arms and ammunition to further the aims of the revolution—which was the case. When the new republic was established in 1898, Polhamus was rewarded with various official positions, including several successive consulates in this country.

Some of these casual visitors to the Picayune's local room supplied amusing incidents during their sometimes too protracted stay in the city. One such was named Rivers. He claimed to be related to a noble English family; which induced his comrades to invest him with the title of "Earl." He first worked on the Delta, and did not join the Picayune staff until the Delta went out of existence in 1893. He and a German baron were both paying attention to a charming young woman, daughter of a prominent Creole family. Rivers tried to prejudice the lady against his rival, by telling her that the baron was no baron, but was really a waiter in a well-known New Orleans restaurant. The baron was indignant. He went to the Picayune, spotted Rivers at work at his typewriter, walked over to him, tilted his head back and spat down the reportorial throat. Then he stalked out, leaving the victim of this curious revenge too utterly overcome with surprise to be able to make any resistance. That was too much for the proud descendant of British peers, and Rivers soon vanished from the New Orleans scene.

Terrence McCarthy's career at the Picayune lasted for several years, but he, too, finally found New Orleans an unpleasant place in which to remain, and drifted away to parts unknown. McCarthy had formerly been a policeman in New York city. He was a big, slew-footed Milesian, who was like a fish out of water in the newspaper profession. He began as a reporter on the Delta, copying police reports. The Delta was housed in a rickety old building in Natchez Alley, and the press-room steam generating plant was located directly under the local room. The reporters lived in constant expectation of an explosion, and one night it looked as if the dreaded moment had at last arrived. Clouds of steam filled the place with terrifying hissing noises. McCarthy announced that he knew all about steam boilers, and volunteered to investigate. He was absent a long, long time. Eventually the steam ceased, the staff breathed freely again,

and a rescue party set out to find the missing Irishman. They located him a block away. He said he had found the safety-valve on the boiler tied down, didn't know how to correct it, and thought his best course was to stay as far away as possible while waiting for the building to blow up. Somehow, the incident did not make for the ex-policeman's popularity with his fellows at the Delta.

After McCarthy enlisted at the Picayune, he was detailed to the City Hall. While there, he wooed, wedded, and subsequently abandoned an estimable young woman employed as a clerk in one of the city offices. That added to his further unpopularity, and McCarthy found it wise to shake the dust of New Orleans off his large, policeman's feet.

One of the most attractive of the younger generation of Picayune reporters which came in about 1890, was Abbott Waterman. He was a native of New Orleans, member of a well-known family. He was a very handsome, poetic-looking young man, slender, graceful, with an interesting pallor, and a head crowned with masses of curling black hair. Waterman was an excellent reporter and a fluent writer, but seems to have had no particular literary aspirations otherwise.

One night, when the telegraph editor was enjoying a short vacation, Waterman was asked to substitute for him. He did so. A dispatch came in from a town in Mississippi describing a mass meeting, and mentioning that the orator of the day was a Mr. Someone (name forgotten), "a colored gentleman." Waterman, who shared all the typical Southerner's prejudices on the race question, looked askance at that phrase, and seizing his blue pencil, altered it to "negro." But it turned out that John Doe (whatever his name really was, which doesn't matter) was a white man, and he promptly brought suit against the Picayune for huge damages, on the ground of libel. The telegram was traced, and it was ascertained that the correspondent in Mississippi had written "a cultured gentleman," and it was the error of the telegrapher that changed "cultured" to "colored." The Picayune's management endorsed Waterman's action, and was prepared to go to court, but the matter was compromised, though I believe the telegraph company had to pay the "cultured gentleman" a handsome sum.

One day, somewhere about the end of the year 1891, New Orleans had the honor of a visit from Ex-President Rutherford B. Hayes. He registered at the St. Charles hotel. Major Robinson sent Waterman thither with instructions to interview the distinguished visitor, and, if possible, get him to say something about the presidential contest of 1876, in which Louisiana had taken so notable a part. The distance from the Picayune office to the hotel was not great, but en route Waterman managed to stop at various establishments where liquid refreshments were dispensed, and on the way back felt under compulsion to drop in again at each and every one of these places; with the result that, by the time he reappeared in the Picayune local room, his recollection of what the ex-president had said was decidedly vague.

The more Waterman strive to focus his confused wits, the less they responded to his demands. The situation was embarrassing, to say the least. Then he remembered hazily that, back home in Ohio, Hayes had a farm, and reasoned, also hazily, that, in all probability, on that farm he raised chickens. Waterman didn't know whether the ex-president was really interested in chickens, but when he sat down to write, as he did on arriving at the Picayune office, found himself impelled to discuss the subject. He wound up by inditing a long interview with the visiting dignity, in which Hayes was made to discourse with much detail about his experiences with the fowl. Major Robinson, who was then the city editor, looked with much doubt on the screed, but on Waterman's assurance that everything was all right, printed the story. It was copied all over the country, with much amused comment on the ex-president's bucolic occupations, but Hayes remained silent; and Waterman had to tell on himself before his comrades learned just how that extraordinary interview was obtained.

Waterman turned out to be a solid citizen, sober, highly respected, and exemplary in all respects. When the Standard Oil Company established a plant in Baton Rouge, he quit the Picayune to take a position as public relations man with it, and died in that employ some years ago.

Other reporters who were members of the Picayune staff in the 1890s were E. K. Pelton, A. W. Newlin, Thomas J. Nolan, Ernest Walridge, James M. Augustin, Nelson Ayres, Henry H.

Ahrens and Armistead R. Holcomb. Pelton passed from the Picayune to the Times-Picayune at the time of the consolidation, in 1914, and was employed by the latter till his death in the late 1920s. He died suddenly while walking in Camp street. He was possessed of a dry wit, and that, together with a fancied facial resemblance to Bill Nye, caused his associates to bestow that celebrated humorist's name on him as a sort of affectionate nickname.

Newlin came to New Orleans from Indiana, and worked on the Picayune till its consolidation with the Times-Democrat, when he transferred his activities to the States. His specialty was labor and political news. He wound up as a political office holder. He served as public administrator in New Orleans for some years. He was stricken with paralysis in Baton Rouge while attending a meeting of the State Central Democratic Committee, of which he had recently been elected secretary. He lingered for some time, but never really recovered, and finally succumbed to a fresh attack of the ailment which originally prostrated him.

"Tommy" Nolan (everybody called him Tommy) was a lovable fellow, who numbered his friends in New Orleans by the score. He died in 1913 while employed on the Picayune as its City Hall reporter. He had been identified with the paper for fifteen or twenty years. He was a native of New Orleans, but started out to earn a living by clerking in a country store. That wasn't to his taste, and he returned to the city, to start at the bottom of the journalistic ladder, and by diligence and ability to work his way up to an enviable place in the profession in which the remainder of his life was to be spent.

Nolan wrote a weekly column entitled "McDonogh Has His Eye on the Hall," in which, in a good-natured, conversational fashion, he discussed all manner of topics connected with the city government. The reason for the title was the fact that the statue of McDonogh in Lafayette Square faces the city hall, and Nolan liked to imagine that the old philanthropist's bronze bust kept tabs on affairs on the opposite side of St. Charles street, and confined his impressions to the writer of the column. In this way Nolan was able to initiate a good many reforms and improvements later put into effect by the municipal authorities. One of them was the city's street repair department. Nolan was a clever

rhymers, and wrote some delightful humorous sketches, but he did not sign his work, and consequently did not obtain the credit that he deserved. His death was preceded by a long illness.

Ernest Walridge was the son of a Gentile father and a Jewish mother and thus alien to both faiths. He lost his parents early in life, and grew up practically in the gutter. He knew how to read and write; otherwise he was totally uneducated. Nevertheless, from a beginning in the early 1890s as a cub reporter, he managed to pick up—no one ever knew how!—a knowledge of newspaper work. He had the police “run” during his entire career, found it congenial, and handled some important stories not inefficiently. During the Spanish-American war he accompanied Hood’s “immune” regiment to Santiago de Cuba. Walridge had all the defects of his upbringing, but he loved the *Picayune*, and had a consuming ambition to shine as a journalist which served him as substitute for talent. When the *Picayune* was united with the *Times-Democrat* in 1914, he tried his luck in the Texas oil fields, found it mainly bad luck, and then drifted to New York, where he died.

James M. Augustin was the son of John Augustin, the noted soldier, scholar, duellist, and linguist, who was the city editor of the *Democrat* when that Journal was at the zenith of its brilliant history. James inherited his father’s flair for languages, some portion of his scholarship, and not very much of his journalistic ability. He was, however, in his own way, a good reporter, and wrote a good deal of matter of a historical character which will prove of value to future students of the annals of New Orleans. He worked on the French daily *L’Abeille* (The Bee), on the *States*, and for many years on the *Picayune*, where he was employed when death claimed him.

The *Picayune* had the experience, probably unique in the annals of New Orleans journalism, of having in its employ in the later 1890s three Protestant ministers. The Rev. Nelson Ayres was an Episcopalian, but eventually was converted to Catholicism, and became a priest in that church; but Ahrens and Holcomb were Methodists. Ayres came from Mississippi. For some years he edited the *Picayune*’s Sunday children’s page and wrote the sketchy book-reviews which, in his time, were all that the paper was inclined to allot to current publications. After his ordination as a Catholic priest he was assigned to a church

in Jefferson Parish, below the city; but he quarreled with the diocesan authorities, withdrew from the Catholic church and, I believe, ended his days as a Baptist preacher somewhere in Mississippi. He was a man of considerable learning and literary ability, and published one or two novels.

Henry Ahrens was never quite able to detach himself from the denomination in which he ranked as an ordained minister. During the entire time that he was connected with the *Picayune*, he filled engagements to preach at churches in various parts of the state. He was a good preacher, and his sermons were always well received by the congregations which invited him to appear before them. Ahrens was the son of a widely-known German-born itinerant evangelist who, like his son, divided his loyalties between the church and the press; that is, he published a successful weekly German-language magazine at the same time that he was busy as a preacher.

Henry Ahrens' connection with the *Picayune* lasted some fifteen years. He supplied the papers with religious news, and his fairness to all denominations won him the esteem of his readers and made him invaluable to the paper. During World War I, he was attached to the plant protection department of the U. S. Shipping Board, and then, when peace came, went to Washington, D. C., to handle religious matters in the census bureau. I believe he was also at one time identified with the Department of Commerce. Later, he returned to New Orleans and resumed his old place of religious editor, now with the *Times-Picayune*; but he managed to involve himself in a political controversy, and was retired. He died a few months later.

Holcombe's career was more spectacular and profitable. He belonged to a prominent Louisiana family, was carefully educated for the Methodist ministry, and duly ordained. But he wanted to see something of life before settling down in the routine of parochial duties. For a year he worked on the *Picayune*, and then became a circuit-riding preacher in North Louisiana. He found this occupation less interesting than he had anticipated, and wired the *Picayune* asking to be permitted to resume his old job, on the ground that he needed to see more of the human spectacle. He remained on the reportorial staff for several years.

Holcombe was a good reporter, with the "nose for news" which is a prerequisite for success in the profession, but one

day he slipped up. He wrote a story accurate enough as far as his information went, but the information turned out to be prejudicial to certain persons named in the article, and the Picayune, finding itself confronted by a \$200,000 libel suit, dispensed with Holcombe's services. The suit was eventually decided in favor of the Picayune, but too late to be of any help to the unfortunate reporter.

Holcombe went to St. Louis, where he worked on the Times until 1918. The outbreak of the first World War proved too exciting for the young man to remain so far away from the scenes of big events, and he threw up his place in St. Louis to go to New York. Luck was with him; he got a job on the Herald-Tribune and within a few years rose to be managing editor, with a salary of \$40,000 per annum. After some years of this fabulous prosperity he had accumulated money enough to buy a small country newspaper in Maryland, and edited it very happily and successfully until his death, four or five years later.

From 1893 to 1914 the presiding genius on the Picayune's local room was Herman J. Seiferth, who succeeded Major Robinson as city editor, when he died in the first-named year. Seiferth was a remarkable man, blest with a vigorous constitution, which resisted years of the most strenuous labor. He was a native of Russia, but was brought to the United States by his parents when a small child. After a brief stop-over in Indiana the family made its way to New Orleans. The father was a scribe—one of those Jewish semi-religious persons whose business it is to transcribe the Hebrew texts used in the services of the synagogue. He was a man of learning and ability, but was handicapped by a lack of knowledge of the English language, and in New Orleans he and his dependents did not have any too prosperous a history.

Young Seiferth was fourteen years old, when, on March 4, 1879, he followed a fireman's parade through the streets until it stopped in front of the Picayune office, to offer the usual complimentary serenade. March 4 was the day annually celebrated by the city fire department in commemoration of its foundation, and the procession of men in gorgeous uniforms, fire engines gaily bedecked with flowers and ribbons, and sleek, well-groomed horses always fascinated the boys of the city. When Seiferth reached the Picayune office, however, he deserted the parade, went in, and asked for a job. He got it. He was made office-boy

in the local room at a salary of nothing per week. Later, when his services had proven worth while, he was given a tiny stipend. Small as it was, the pay was welcomed gladly at the Seiferth home, where any addition to the family income meant just that much relief from anxiety, if not from privation.

Seiferth rose rapidly, and within ten years was the Picayune's star reporter—probably the star of the entire profession in New Orleans. His promotion to the city editorship followed naturally. He held that exacting post till the Picayune and the Times-Democrat were consolidated, and then was welcomed on the local staff of the reorganized and combined papers. Under these auspices he became an agricultural columnist, and his "Lay of the Land" was widely read. He also wrote the Times-Picayune's real estate news. He celebrated his fiftieth anniversary as a New Orleans newspaperman not long before his health broke down and he had to retire. He died a short time thereafter. The Times-Picayune gave him a testimonial dinner on that fiftieth anniversary, and presented him with a check for a thousand dollars.

Seiferth had a notable gift for poetic descriptive writing, and could, on occasion, turn out very creditable verse. It is to be regretted that the engrossing business of the city editor's desk prevented him from exercising either gift, after he inherited that place. There, he worked regularly from about 2 o'clock in the afternoon till the paper went to press, twelve or fourteen hours later, with a brief intermission for dinner. He handled every day 15,000 or 20,000 words of "copy;" read the local papers, prepared the schedule of assignments for his staff; and, as the gruelling hours of the night drew to a close, visited the composing room and lent a hand in making up the forms that were to go on the press. It was an almost unbelievable performance, but it lasted twenty years, and Seiferth emerged from it apparently not the least the worse for wear—not even his eyesight having been damaged by the strain which he put upon it.

What reporting was like in the days when Seiferth began his career may be inferred from the following anecdote concerning himself and John F. Baringer. Seiferth related the story, in some reminiscences of his early days on the New Orleans Picayune, published a good many years ago. Seiferth was sent to report a Republican nominating convention which

was expected to convene on the opposite side of the Mississippi River from New Orleans, in the vicinity of Harvey's Canal, a then extremely remote neighborhood. He was just a boy, and was chosen for the task because the convention was understood to be a cut-and-dried affair, which would last only a short time, and was not likely to end in the free-for-all fight in which such gatherings usually terminated.

On arriving at Harvey's Canal early in the morning, Seiferth found John Baringer already on duty. Baringer represented the Democrat, but he had a fatherly interest in the boy, and took him under his wing, so to say. Such assemblies were composed mainly of negroes, and the majority of the sable politicians of that epoch stayed "put" only between bids. A higher price always commanded their immediate adherence, irrespective of anterior commitments. In this way the convention, which was scheduled to be brief, turned out to be a prolonged contention between bickering factions.

Two hours passed. The preliminaries had not yet been completed. The representatives of the press were seated in the front of the hall and treated as guests of honor. Most of the speeches—there was always a flood of oratory on these occasions—were obviously made for their benefit. When noon came, the unbreakfasted reporters were invited to lunch with the officers of the convention in a room in the rear of an adjacent grocery store. The hosts were darker than the ace of spades.

"We must not eat with those people," said Baringer, who had all of the white man's prejudices usual in that day.

Seiferth somewhat reluctantly agreed.

The parliamentary wrangle raged all day. Night came. The gas lights were turned on. Still there was no sign either of agreement or adjournment. Under the cover of the discussion, however, one faction was conspiring to force a fight on the convention. Suddenly the hall was plunged in darkness, a shot was fired, and then a volley. There was shouting, more shots, more shouting, and then curious smothered sounds, which Baringer, who was an expert in such matters, explained, sotto voce, were grunts and growls indicating that knives and razors were in action as well as pistols.

"What are we going to do?" was the excited boy's natural inquiry.

"Lie flat on the floor," said Baringer, suiting his action to the word. "Then crawl after me, and don't let go of my coat tail."

"I won't," replied Seiferth.

They wriggled down the long aisle. Seiferth clung to his guide in spite of the feet which trampled upon him, and the burly forms which impeded his progress from time to time. Eventually they reached the lobby. Gloom and battle reigned there also.

"I'm going to slide for life down the balusters," explained Baringer. "You, kid, keep right behind me."

"I will," answered Seiferth, with fervor.

They found the staircase and, in the darkness, straddled the rail and slid down. There was a door at the bottom. This gave them an exit to the tree-studded grounds in the midst of which stood the little courthouse where the convention had been called to meet.

"We can't leave this picnic yet," said Baringer, who was far too good a reporter to depart without a full account of the fight. "Let's see if there is any of the lunch left. We can eat while we wait for hostilities to subside."

Seiferth, who was ravenously hungry, thought this an excellent idea; but alas! the food had all been consumed at midday, and they could locate nothing but the empty baskets.

After the wounded had been removed, a committee from the convention requested the gentlemen of the press to return and under guarantee of protection, witness the further proceedings. The protection consisted of a barrier of burly black flesh interposed between the press table and the remainder of the thronged apartment. As far as Baringer and Seiferth were concerned, however, the convention never did end. It was in full blast when at midnight they hired a wagon to take them through a rain which had inopportunately begun to fall, to the Jackson Avenue ferry. They reached Camp street and their respective offices in time for each to prepare a good story for the morning edition.

From those old days only a few ex-Picayune reporters still survive. Memory recalls the names of five or six; the rest, as the reader of the foregoing pages has seen, have been gathered to their fathers. It is the fate of the newspaperman to see his work forgotten within twenty-four hours of its appearance in print. His name is rarely known outside of professional circles, and even there, it seldom survives in the recollection of his comrades, after death's grim summons is heeded. I have tried to put on record something about a group which, in the main, was high-minded, loyal, public-spirited, and talented—which, for that reason, deserves all, and more, of the brief and inadequate tribute I am able here to offer its memory.

DR. OTTO LERCH

1855 - 1948

by

A. E. FOSSIER, M.D.

The most colorful and yet the most modest personality who ever adorned the brilliant roster of the Medical Profession of New Orleans, a man of exceptional versatility, talent and distinction, passed away on the fourth day of April, 1948.

Doctor Otto Lerch was born in Prenzlau, Germany, a city a short distance north of Berlin. His parents were Frank Lerch and Augusta Bradendique.

His early education was acquired at the Gymnasium there, and later the degree of Master of Arts was conferred on him by the University of Berlin, where he majored in Chemistry. After his graduation, he was employed as a research chemist by a large industry.

He continued his studies at the University of Rostock under the renowned chemist, Weber, and in 1883 he earned the degree of Doctor of Philosophy in Chemistry and Geology. He was Weber's favorite student and chief assistant. He was one of the most promising young chemists in Germany and a brilliant future was ahead of him; his ability was recognized by the German Government which appointed him to many expeditions for chemical research. Yet, he could not resist the siren call of adventure, so, during the summer of 1883, he left his native land for the wilds of Texas, where he made his home in San Angelo and became interested with his brother in the development of several land projects and in the colonization of Tom Green County.

Being a student above all, the monotony of commercial life soon palled on his brilliant intellect; he craved to conquer new fields of learning. He decided then that he would be a lawyer. He read law in the office of Judge William Wallace and shortly afterwards passed the bar examination. He practiced law for a short while in Midland, Texas, but soon afterwards hung his shingle in San Angelo. On very rare occasions, he would casually

mention that he had saved a prisoner from the gallows, and that he enjoyed a successful practice. But science was his unappeasable mistress, so, when the opportunity presented itself to join a United States Geodetic Expedition to explore the wilds of north Arizona, he forsook the ease and tranquility of his law office for the dangers and hardships of the wilderness. This was the first scientific exploration of that wild section of the country. He made an intensive study of the geology and minerology of that region. Having completed its mission, that same group was ordered to Honduras, Venezuela and Guatemala. There, through dense tropical jungles he and his group hacked their way making geological maps and surveys. His interest in the archaeology of that region was aroused by the uncovering of many Mayan ruins. He made drawings of the hieroglyphics of that ancient cult, and painted numerous water color sketches of the remnants of these historical monuments. During the summer of 1890, he was forced to abandon his labors there and return to San Angelo, Texas, to recuperate from a fever contracted in the jungles.

Soon after he regained his health, he left Texas to occupy the position of State Geologist of Louisiana. He decided then to study medicine. He matriculated at the Medical Department of Tulane University in 1891, and received his diploma there in 1894. Although his many duties as a geologist called him to many parts of the State and caused many interruptions in his studies, he was a brilliant student and commanded not only the respect and admiration of his professors, but of his fellow students as well.

Immediately after his graduation, he practiced medicine for a short while in Livingston Parish, where he devoted his time to the study of malaria. He soon returned to New Orleans to practice Internal Medicine as a specialty.

He applied for the Chair of Chemistry of the Medical Department of Tulane University, made vacant by the death of his devoted friend, Dr. Joseph Jones, Professor of Clinical Medicine and Chemistry. He was exceptionally well qualified to fill the position, but failed to obtain the appointment.

At that time, he was a volunteer assistant in Chemistry and Bacteriology and also gave private courses in physical diagnosis. In 1900, he was appointed to the Chair of Clinical Medicine at the New Orleans Polyclinic, Post Graduate School of Medicine, later Post Graduate School of Tulane University. He resigned his professorship in 1919.

He was elected to membership in the Orleans Parish Medical Society in 1899, and was made an honorary member on October 11, 1943. In February, 1946, the same distinction was conferred upon him by the Louisiana State Medical Society.

He retired from the practice of medicine twelve years before his death, but even in his retirement, he never relaxed in his active interest in his profession. Many of his old patients consulted him at his home, but he never accepted any compensation whatsoever.

He was the first to practice internal medicine exclusively as a specialty in this city, and was, as well, the first to pay special attention to the treatment of chronic diseases, so sadly neglected in those days.

Many years before the Government restricted the indiscriminate refilling of prescriptions containing habit forming drugs, Doctor Lerch realized the danger, and to prevent it, did not permit the refilling of his prescriptions without his authorization. The purity of his motive was questioned by some of his colleagues.

To him, the practice of medicine was a cherished privilege; he fully appreciated its importance and its responsibility. A sick person, rich or poor, in private practice or in his hospital ward, was always a patient, and equally commanded his utmost effort, irrespective of the time it took or the personal sacrifice it involved. He never spared his personal comfort at the expense of the sick entrusted to his care. His charity was boundless and was frequently abused; not only did he give freely of his time and skill to the poor, but on numerous occasions provided them with medicine, food, and occasionally paid for their hospitalization.

Prior to the first World War, Doctor Lerch would pay yearly visits to his parents in Berlin and to the clinics of Europe. His intimate acquaintance with the leaders of medicine in Berlin and Vienna, many of whom had been his fellow students and friends, afforded him unusual opportunities for study.

He was the first to introduce the Wasserman reaction here. He was in Berlin at the time of its discovery. His greeting to me on his arrival was: "I have brought all the ingredients from Wasserman's laboratory, now it is up to you to make the test." For days I studied his meticulous notes, and shortly afterwards, in our office laboratory we were making the then intricate test.

He was employed as a pathologist by the United States Marine Hospital Service, now the United States Public Health Service, during the yellow fever epidemic of 1898, when he contracted a virulent attack of that disease. In 1905, the year of the last yellow fever epidemic in New Orleans, nearly every pathologist and bacteriologist labored with feverish haste to discover the cause of that dreadful scourge. Doctor Paul Emile Archinard, our brilliant dean of bacteriology, believed that he had made the monumental discovery, but refrained from committing himself before he had consulted his friend Lerch. Dr. Lerch pointed out to him his error, and convinced him that he was on the wrong track, and at his suggestion, the matter was dropped.

He was a prolific writer. He made many real contributions to the field of Chemistry, Geology and Medicine. Many basic geologic discoveries in the States of Texas and Louisiana are attributed to him, and even until very recently, he was consulted by geologists seeking the benefit of his knowledge and experience. His publications were numerous, yet he never wrote for the sake of writing. His articles were factual, logical and scientific, and always a contribution to the subject he discussed.

His book, *RATIONAL THERAPY*, was published in 1919. It is original in its composition and altogether different from the usual stereotyped text books on treatment. It is a thesis based on the theory that blood alone cures and that all methods used to treat diseases must serve to purify it, and bring it where needed. He postulated: "I advance the theory it (*Vis medicatrix naturae*) is a force that acts through the blood. The blood represents it. It carries nourishment to every cell of the body to select for its own proper use and in return carries away waste matter to be excreted by way of lungs, kidneys and skin. It contains the means of defense against an invasion of micro-organisms and toxins, and when injury is done, it carries the means of repair whenever they are needed."

At the time of his death, he was busily engaged in revising his book and bringing it up to date. Unfortunately, he was taken away before he could complete his labor.

He achieved distinction and fame not only in many branches of science, but in art as well. In his early years he was a pianist of note, and received acclamation for his concerts in Germany.

While on a visit to Berlin, his oldest brother, the conductor of a famous orchestra, invited him to the podium, handed to him his baton, insisting that he conduct the next number on the program. He was also a good water colorist, and although he preferred the painting of landscapes, he did some very interesting portrait sketches.

His brilliant intellect, his retentive memory, his logical deductions, his power of observation, his *coup d'oeil medicale*, his uncanny ability to delineate and palpate organs, his laboratory background, and his vast store of knowledge, made him a great diagnostician. His sympathy, his unswerving attention to, and his interest in and devotion to his patients, commanded their confidence and collaboration, and contributed greatly to his unusual success as a therapist.

Having the hands of an artist, the ears of a musician, and the training of a scientist, he was well equipped for the practice of medicine. He excelled in the art of physical diagnosis. His sensitive fingers made him a master of palpation and percussion, and his keen ears an exceptional auscultator. He devised a new technique which increased greatly the accuracy of percussion. His method is described in the 19th Edition of Dorland's *Medical Dictionary* as follows: "Percussion in which the hammer is allowed to fall by its own weight on the pleximeter, the elements considered in the examination being the sound heard, the vibrations felt in the handle of the hammer, and the rebound of the hammer seen. Called also Lerch's percussion."

Although confined to a wheel chair for his last few years, his interest in medicine never lagged. His mind was active, and to the very last he kept abreast of the latest developments of his profession.

Only a few months before his death, he published an hypothesis on the cause of cancer. Even in his nineties his brilliant mind was keen and his memory unimpaired. Even to his best friends he never mentioned his accomplishments; he never lived in the past, but always looked forward for new fields to conquer.

For more than fifty years medicine was his vocation and avocation; in fact it was his very life. For it, he cast all his other accomplishments aside. His supreme ambition, which reached the height of passion, was to teach. He aspired to the chair of Practice of Medicine at his Alma Mater, but it was never given

him. It was his only frustration. He was not only able to impart knowledge, but also had the rare faculty to inculcate a greater desire for scholarship. He was an able teacher. He is affectionately remembered, even to this day, by many of his former students.

To know him was to love him. His affection, loyalty and nobility of character endeared him to his friends. He was generous to a fault. He never ignored an appeal for his help, even when he knew that his generosity was being abused. Although he had ample means to provide him with every luxury, he lived simply but well. He enjoyed his greatest pleasures in his home and in the company of his friends. He entertained sumptuously, and culture and refinement reigned at his festive board. His travels took him to the four corners of the world.

The sudden death of his wife, to whom he was passionately devoted, was a great shock from which he never recovered. It undermined his rugged constitution. He never regained his strength, and from that time on he was an invalid confined to a wheel chair. On the fourth day of April, 1948, he passed away peacefully in his sleep.

The purpose of this brief biography is not to extol him, but to give a brief resumé of his eventful life. His versatility, his accomplishments, his talent and his genius, inscribe more eloquently his eulogy on the pages of time. He was a great man.

Otto Lerch the chemist, geologist, minerologist, archaeologist, lawyer, musician, painter, polyglot and physician, in all of which he excelled. Dr. Lerch is no more: REQUIESCAT IN PACE.





